

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2058 of 2014.

Debi Prasad Satapathy,
son of Shri Brahmananda Satapathy,
aged 51 years, Indian Inhabitant,
presently residing at Flat No. H-5/3,
New Airport Colony, Vile Parle (E),
Mumbai-400 099.

.... Petitioner.

Versus.

- 1) Union of India,
through : Ministry of Civil Aviation,
Government of India, New Delhi.
- 2) The Chairman,
Airports Authority of India, Rajiv
Gandhi Bhawan, Safdarganj Airport,
New Delhi.
- 3) The Regional Executive Director,
Western Region, Airports Authority
of India, Chhatrapati Shivaji
International Airport, Mumbai 99.

.... Respondents.

Mr. Rohan Cama a/with Mr. Mandar Soman and Mr. Gobinda C.
Mohanty i/by Mohanty and Associates for the petitioner.

Mrs. Neeta V. Masurkar a/with Ms. Nisha Valani and Mr. S.G.Thakur
for respondent No.1.

Ms. Shilpa Kapil for Respondent Nos. 2 and 3.

**CORAM : S.C. DHARMADHIKARI &
SMT.BHARATI H. DANGRE, JJ.**

RESERVED ON : 5th OCTOBER, 2017.

PRONOUNCED ON : 13th October, 2017.

JUDGMENT (Per : Smt. Bharati H.Dangre,J)

1) The petitioner has invoked the writ jurisdiction of this Court seeking direction to the respondents to promote the petitioner to the post of Assistant Manager (Technical) on regular basis with effect from 4th July, 2002 with all consequential benefits. The petitioner has also prayed for declaration that action of the respondent be declared as arbitrary and not in accordance with law.

The undisputed facts involved in the petition are culled out as below:

2) The petitioner was appointed as technical assistant with the Airport Authority by order dated 6th May, 1988. In pursuance of the said order of appointment, he resumed his duties at Nagpur Airport and served for a period of five years at the said place. Subsequently, he was transferred to Bhubaneshwar, Portblaire and again to Bhubaneshwar where he worked for ten years. Thereafter, from the year 2010 he is posted at Mumbai.

3) On 21st December, 2000 the respondents published a seniority list of the Senior Superintendent (Technical) Cadres and the petitioner's name was shown at Serial No. 131. In the year 2002 on the recommendation of the Competent Authority the petitioner was promoted to the post of Assistant Manager (Technical) under the career progression scheme with effect from 1st August, 2000 and thereafter promoted to the post of Assistant Manager (Technical) Regular under regular promotion with effect from 4th July, 2002. However, from two months of taking over the post of Assistant Manager (Technical)-Regular, the petitioner's name was deleted from the promotion list.

This withdrawal of the name from the said promotion list is the genesis of the present litigation. The petitioner was served with the memorandum on 6th October, 2003 informing the petitioner that he had withdrawn and excess amount of Rs.19.417/- towards hotel bill plus 6797/- penal interest during the training programme at Chennai in the year 1999. As per the petitioner, he refunded the entire advance amount granted for the said journey under the amnesty scheme prior to issuance of this memorandum. The issuance of memorandum resulted into imposition of penalty of withholding of increment for the period of one year with cumulative effect by an

order dated 2nd January, 2004 passed by the Member (PVA) Airports Authority of India. The said period of penalty came to an end on 31st December, 2005 when the petitioner again made representation to consider him for promotion, which resulted into grant of regular promotion to the petitioner to the post of Assistant Manager (Technical) with effect from 1st January, 2006 by an order dated 3rd April, 2007 issued by the Manager (Personnel) Airports Authority of India.

4) The grievance of the petitioner is that he is granted regular promotion with effect from 1st January, 2006 whereas he is entitled for the said promotion from 4th July, 2002 and for unjustifiable reasons he was kept away from the said benefit, though on the date of his initial promotion i.e. 4th July, 2002 no departmental inquiry was initiated against him. He relies upon the case of one Alok Kumar Rawat who was working with the respondents and who was allegedly victimised in the identical manner as the petitioner and who had approached the High Court of Madhya Pradesh at Indore Bench which granted him relief by an order dated 28th February, 2013 in Writ Petition No. 1918 of 2006 and he was conferred with the benefit of promotion with retrospective effect.

5) The petitioner approached this Court by filing the present

writ petition on 23rd June, 2014. On 6th June, 2017 the petitioner sought leave to amend the petition so as to explain the delay in filing the petition and the leave was granted. The petitioner amended the petition extensively, carrying out other amendments rather than restricting the amendment of petition in terms of order passed by this Court on 6th June, 2017 and therefore this Court on 3rd August, 2017 permitted the petitioner to delete the portions which have been amended including a prayer clause which came to be inserted without there being any order from the Court.

6) The petition in turn was amended giving the explanation as regards delay in approaching the Court in respect of a promotion which was denied to him by an order dated 25th September, 2002. The petitioner offered an explanation by stating that he preferred several representations from time to time to the respondent authorities. However, there was no response from the said authority though the respondents assured him to do the needful and when they failed to do so he invoked writ jurisdiction of this Court in 2014. It is contended that there is no delay in approaching the Court and even if there is any Court pleased to condone the same in the interest of justice and equity.

7) We have heard learned Advocate Shri Rohan Cama, along with Mr. Mandar Soman and Mr. Gobinda C. Mohanty i/by Mohanty

and Associates for the petitioner, learned Advocate Mrs. Neeta V. Masurkar a/with Ms. Nisha Valani and Mr. S.G. Thakur for respondent No.1 and learned Advocate Ms. Shilpa Kapil for Respondent Nos. 2 and 3.

8) The learned counsel for the petitioner vehemently argues that he was deprived of his promotion to the post of Assistant Manager (Technical)-Regular to which he was entitled on the basis of seniority and on consideration of his performance. According to him, without following the principle of natural justice in the form of any show cause notice or any hearing the promotion order issued on 25th July, 2002 was cancelled by the impugned office memorandum dated 25th September, 2002. The Counsel for the petitioner argues that there was no justification for withdrawing the said promotion, as on that date neither any inquiry was initiated against him nor any inquiry was pending. The Counsel for the petitioner fairly submits that an inquiry was initiated by memorandum issued to the petitioner on 6th October, 2003 under Regulation 29 of the Airports Authority of India Employees (Conduct, Discipline and Appeal)Regulations, 2003 . By the said memorandum the petitioner was charged with falsification of documents and defrauding the authority, when he was deputed to undergo meltron taperecorder MVLR-II training and at RTC Chennai

from 16/8/1999 to 26/8/1999 and it was alleged that it had manipulated and inflated the hotel bill and claimed excess amount of Rs.12720/-. He was further charged with using the amount by way of interest amounting to Rs.12720/- by way of interest amounting to Rs. 6797/- accrued thereon since September, 1999 till June, 2003. The petitioner was charged with lack of integrity and acting in the manner of becoming of employee of the authority thereby violating Regulation 4 (1) (a) (d) of committing misconduct as per the Regulation of 2003. The learned counsel submits that he deposited the entire amount in the Amnesty scheme. The learned counsel also do not dispute that he suffered a penalty of withholding of an increment for a period of one year with cumulative effect. Learned Advocate Shri Rohan Cama do not dispute the fact that the penalty imposed upon him by an order dated 4th January, 2004 was not assailed by him and he under went the said penalty.

Advocate Shri Cama would contend that he repeatedly made representations to the authorities and the course of action followed by him is highlighted by him in the petition and he contends that in spite of his repeated request the respondent did not redress his grievance. He invited our attention to the various representations which he had annexed with the petition and he contends that the

attention of authorities was also invited to the judgment of the Apex Court in the case of **Jankiraman Vs. Union of India AIR 1991 (SC) 2010** and towards the the judgment of the Madhya Pradesh High Court in case of his colleague Mr. Alok Kumar Rathod but the respondent utterly neglected to restore the benefits of promotion to the petitioner which constrained him to approach this Court. According to Shri Kama, there is no delay in filing the petition since the cause of action was kept alive by preferring several representations and it was only when no cognizance was taken by the authorities he approached this Court.

The respondent No. 2 and 3 had filed their affidavit-in-reply and stated that under the progressive career scheme, DPC was conducted in respect of the managers who had completed ten years of regular service and completed eight years service for the next higher post of Senior Manager and the name of the petitioner was included in the seniority list. The respondent placed reliance on an order which conferred such career progression/promotional avenue dated 16.8.2000 which made it clear that it was a one time measure and the bench mark for promotion was as per the normal DPC Rules. The respondent also placed reliance on communication and order dated 19/26th March,2001 under special career progression/promotional

avenue. The said order contain the following particulars.

“In continuation of letter
No.A.60011/64/00-P&C dated 16th
August,2000, it is clarified that

a) Promotion under this scheme will be on the basis of seniority in the grade subject to the condition that the employee is not unfit for promotion.

b) The promotion under this scheme is subject to clearance from Disciplinary & Vigilance angle.

c) Promotion against regular vacancies will be in accordance with the provision of R & P Rules and all eligible officers irrespective of the fact whether they have been granted promotion under Career Progression Scheme or not will be considered as per procedure laid down for DPC.”

According to the respondent, the petitioner was charge sheeted for misconduct and the disciplinary authority imposed a penalty of withholding the next increment of the petitioner for one year. The respondents further state that on completion of the penalty period, the case of the petitioner for one year again considered for DPC and he was promoted as with effect from 1st January, 2006.

9) On careful consideration of the argument advanced on both sides, we note that the promotion granted to the petitioner came to be

withdrawn/cancelled vide office memorandum dated 25th September, 2002 issued by the Director Biju Patnaik Bhubaneswar Airport. The petitioner approached this Court by filing the writ petition on 23rd June, 2014.

The petitioner has offered an explanation for delay in filing the writ petition. However, the explanation, according to us, is unsatisfactory. The petitioner has referred to various representations and attempted to explain the delay by stating that he persuaded the respondent authorities to redress his grievance. However, according to us, the repeated representation did not give a fresh cause of action to the petitioner and mere making of representation cannot justify his belated approach. According to us, the petitioner is a person who is not vigilant of his rights and has acquiesced with the situation from 2002 to 2014 i.e. almost for a period of 12 years and we do not feel that we should exercise our extraordinary and discretionary writ jurisdiction to help the tardy and indolent / lethargic litigant like the petitioner. The petition filed by the petitioner is grossly belated with no satisfactory explanation for delay. We would not like to extend our discretion to the petitioner who has reflected completely negligent attitude to assert his right and approached us at a belated stage and put the blame on the respondent by attributing that his repeated

representations were not replied to by the respondents and therefore there is no delay in filing the present petition. We are not able to persuade ourselves to the submissions made by the learned Counsel and we do not intend to condone the delay when we are of the clear opinion that the present writ petition is hopelessly barred by limitation.

Further the petitioner cannot take benefit of the repeated representations as the said representation will not give him fresh cause of action and would not revive the cause which has become stale.

10) We have even examined the case of the petitioner on merits. The petitioner is an employee who was charged with misconduct and fraud since he claimed an excess amount by dubious means for wrongful pecuniary gain for himself and thereby defrauded the authority. The petitioner was promoted from 4th July, 2002. However, the career progression scheme of promotion granted to him in the form of career progression scheme was subject to the condition of fitness and subject to clearance from disciplinary and vigilance angle. The petitioner was granted promotion but in view of his conduct it came to be immediately withdrawn by an order dated 25th September, 2002. The petitioner was charged with serious charges

and full-fledged disciplinary inquiry was conducted against him which resulted into imposition of penalty, by an order dated 14th January, 2004. The petitioner never assailed the said order and on the other hand suffered the said penalty. He even accepted his guilt by depositing the amount in the amnesty scheme under the fear of vigilance/investigation. The learned Counsel for the petitioner has placed reliance on the judgment in the case of **Union of India Vs. K.V.Jankiraman, (supra)** In the said matter the Hon'ble Apex Court was dealing with sealed cover procedure and clarified that the sealed cover procedure has to be resorted only after charge/memorandum is issued to the employee and not at the stage of preliminary investigation. However, what has been conferred on the petitioner is not a regular promotion but it is a promotion under the career progression scheme as one time measure for promotion to the next higher post in order to avoid stagnation and it was subject to certain terms and conditions including the fitness. The petitioner did not dispute the fact that charges levelled against him of misconduct have been proved and he has been found guilty. In such circumstances, it does not lie in the mouth of the petitioner to claim that he was fit for promotion on 9th July, 2002 and he was very much aware and conscious of the fact that he had obtained the pecuniary

advantage by falsification of documents and had defrauded the Department and as such he was not eligible for promotion. It is not a case where the petitioner is to be considered for promotion subject to keeping the result of departmental proceedings in a sealed cover, here is a case of petitioner who was inflicted with penalty and he seeks promotion with retrospective effect.

The Hon'ble Apex Court in the case of Union of India Vs. Jankiraman (supra) on which the counsel for the petitioner had placed reliance, also makes the following observations:

"We are sure that the Tribunal has not intended that the promotion should be given to the officer from the original date even when the penalty imparted is of reduction in rank. On principle, for the same reasons, the officer cannot be rewarded by promotion as a matter of course even if the penalty is other than that of the reduction in rank. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of

promotion, he is treated differently. The least that is expected of any administration is that does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in presenti. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct."

In such circumstances, we do not think it fit to grant any relief in favour of the petitioner who was not vigilant about his rights and who was rather found guilty of misconduct and we refuse to exercise our discretion in favour of the person like the petitioner. In the result, we dismiss the writ petition with no order as to costs.

[SMT.BHARATI H. DANGRE, J.] [S.C. DHARMADHIKARI, J.]